

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRIAN HARRISON,
Plaintiff,

v.

HOST MARRIOTT CORPORATION D/B/A
BURGER KING RESTAURANT,
Defendant.

Civil Action
No. 97-5925

Gawthrop, J.

December , 1997

M E M O R A N D U M

Before the court is a Motion to Set Aside Entry of Default, pursuant to Fed. R. Civ. P. 55(c), by Defendant Host Marriott Corporation d/b/a Burger King Restaurant. Upon the following reasoning, I shall grant the motion, but order Defendant to compensate Plaintiff for the fees and costs he incurred in securing the entry of default and responding to the motion to have it set aside.

I. Background

On September 22, 1997, Plaintiff Brian Harrison filed this products liability action alleging that he became violently ill and permanently injured after consuming a quarter-pound cheeseburger from the defendant's establishment. Plaintiff seeks recovery for various injuries and permanent disabilities allegedly caused by this incident. On November 10, 1997, Mr. Harrison obtained an entry of default against the defendant

corporation. Although the defendant admits that it received notice of the action on or about September 29, 1997 and failed to file an answer, the defendant requests that this court set aside the entry of default on the basis of "mistake, inadvertence, and/or excusable negligent (sic)." Def.'s Resp. Appl. Default J. at 1.

II. Standard of Review

In exercising its discretion to set aside an entry of default, a court must consider the following factors: (1) whether setting aside the judgment would prejudice the plaintiff, (2) whether the defendant has a prima facie meritorious defense, (3) whether the defaulting defendant's conduct was culpable, and (4) the effectiveness of alternative sanctions. Emcasco Ins. Co. v. Sambrick, 834 F.2d 71, 73 (3d Cir. 1987); see also Feliciano v. Reliant Tooling Co., Ltd., 691 F.2d 653, 657 (3d Cir. 1982) (noting that although standard for setting aside default entry is lower than for opening default judgment, court should apply the same factors in both situations). Because courts prefer to decide cases on their merits, a court should resolve any doubts in favor of setting aside the default. See Medunic v. Lederer, 533 F.2d 891, 894 (3d Cir. 1976).

III. Discussion

A court must first consider whether the plaintiff would suffer prejudice. That the result of this motion is the setting aside of the entry of default is not the sort of prejudice of which the cases speak. See, e.g., Feliciano, 691 F.2d at 657 (finding no prejudice where plaintiff had "not demonstrated any prejudice that would result from opening the judgment, other than the financial costs associated with enforcing a judgment later vacated"). Rather, prejudice in this context means either that the plaintiff's ability to pursue the claim has been hindered or that relevant evidence has been lost. See Emcasco, 834 F.2d at 74. Neither has occurred in this case. Less than three months has passed since the plaintiff filed his complaint. See Feliciano, 691 F.2d at 657 ("Delay in realizing satisfaction on a claim rarely serves to establish the degree of prejudice sufficient to prevent the opening of a default judgment entered at an early stage of the proceeding."). I thus do not see that the plaintiff would be genuinely prejudiced by the setting aside of the entry of default judgment.

Next, a court must examine whether the defendant has a meritorious defense, that is, one which, if established at trial, would constitute a complete defense to the action. Hritz v. Woma Corp., 732 F.2d 1178, 1181 (3d Cir. 1984). The defendant must allege "specific facts beyond simple denials or conclusionary statements." United States v. \$ 55,518.05 in U.S. Currency, 728 F.2d 192, 195 (3d Cir. 1984). In its response to Plaintiff's

Application for Default Judgment, Defendant claims that it has a "reasonable and meritorious defense." Def.'s Resp. Appl. Default J. at 4. It maintains that there is no causal relationship between the incident alleged by the plaintiff and his subsequent injuries. To support this claim, the defendant corporation attached a letter from its insurance carrier denying liability and payment for the plaintiff's alleged loss. The insurance carrier concluded there was no medical proof of a loss and no proof that the alleged injury occurred as a result of the defendant's actions. Thus, with this submission, the defendant has pointed to specific evidence that could support a meritorious defense, and the second factor weighs in favor of the defendant.

A court also must determine whether the defendant engaged in culpable conduct. Culpable conduct means actions taken willfully or in bad faith, and thus requires more than mere negligence. See Hritz, 732 F.2d at 1183; Gross v. Stereo Component Sys. Inc., 700 F.2d 120, 123-24 (3d Cir. 1983) (defining culpable conduct in this context as "actions taken willfully or in bad faith"). For example, a "disregard for repeated communications from plaintiffs and the court, combined with the failure to investigate the source of a serious injury, can satisfy the culpable conduct standard." Hritz, 732 F.2d at 1183. Here, the defendant corporation entirely failed to enter an appearance or to respond to the complaint. The defendant claims that it did not ignore the complaint and submits that "several factors beyond its control" caused this failure to

respond. Def.'s Resp. Appl. Default J. at 3. The defendant claims that a series of organizational mishaps led to the delay in replying. The defendant does not, however, elaborate on how these internal misfortunes were out of its control. Further, the defendant asserts that "it is commonplace for [a corporate] Defendant to file either a Stipulation for Enlargement of Time or a Motion for Enlargement of Time within which to Answer." Id. Neither of those steps was taken here, however. Nor, according to Plaintiff, did the defendant call the plaintiff to ask for an enlargement of time. Indeed, the given reason for the default entry is that the defendant did not take any action outside its own organization with regard to the pending lawsuit. Plaintiff correctly states that "a complex organizational relationship does not put the Defendant above basic rules of civil procedure." Pl.'s Resp. Def.'s Mot. Set Aside Entry of Default at 2-3. Nevertheless, although one may see negligence, even gross negligence, in the defendant's failure to file an answer, I do not find that failure to rise to the level of culpable conduct. "Culpable" is a strong word, its Latin root suggesting more peccable procedural flaws than at bar.

Finally, a court must determine the effectiveness of alternative sanctions. Imposition of attorney's fees may be an effective alternative sanction in an appropriate case. See, e.g., Foy v. Dicks, 146 F.R.D. 113, 117 (E.D. Pa. 1993) (ordering payment of attorney fees as sanction for "procedural ineptitude" in defaulting in a series of complaints). In his response, the

plaintiff opposes the defendant's motion, but has not, in the alternative, requested that this Court order the defendant to pay the plaintiff's attorney's fees for defending this motion. However, a court will often spontaneously impose a monetary sanction against the defendants rather than refuse to set aside a default entry. See id. (awarding "attorneys' fees that would have never been incurred had the [defendant] complied with Fed. R. Civ. P. 12(a)"); see also Grow Tunneling Corp. v. Conduit & Found. Co., Inc., NO. CIV.A. 96-3127, 1996 WL 411658, at *7 (E.D. Pa. Jul. 16, 1996)("In many similar situations, courts have set aside a default, but required the defaulting defendant to reimburse the plaintiff for the expenses incurred in securing the default and default judgment and responding to the motion to set them aside."). Accordingly, I shall impose a monetary sanction on the defendant to compensate plaintiff's counsel for the time and expense he has incurred in this procedural joust.

In sum, I find that the Emcasco factors weigh in favor of setting aside the entry of default, but that defendant's studied non-feasance in the face of the commands of the Federal Rules warrants its paying the plaintiff's costs incurred in securing the entry of default and responding to the motion to have it set aside.

An order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRIAN HARRISON,
Plaintiff,

v.

HOST MARRIOTT CORPORATION D/B/A
BURGER KING RESTAURANT,
Defendant.

Civil Action
No. 97-5925

O R D E R

AND NOW, this day of December, 1997, Defendant's Motion to Set Aside an Entry of Default Pursuant to Fed. R. Civ. P. 55(c) is GRANTED. It is further ordered that the Defendant shall compensate the Plaintiff for the attorneys' fees and costs he incurred in securing the entry of default and responding to the motion to have it set aside. It is hoped that counsel can agree upon a just sum in that regard, without the intervention of the court. If not, I shall be available.

BY THE COURT

Robert S. Gawthrop, III, J.